

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

DAVID G. STERN,)
Petitioner,)
v.)
DAVID L. WINN,)
Respondent.)

)

Civ. Action No. 04-CV-10465-NG

RESPONDENT'S MOTION TO DISMISS

INTRODUCTION

Respondent respectfully moves to dismiss the instant Petition of David Stern pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure. The Petition challenges the date on which Stern would be released to community confinement. The Petition should be dismissed because it fails to state a claim. Among the reasons justifying dismissal are that the new policy announced by the Bureau of Prisons (“BOP”) in December 2002 with respect to community confinement correctly applied the relevant law, in particular 18 U.S.C. §3624(c). The grounds for this motion are set forth more fully in the Memorandum of Law submitted herewith and the accompanying Declaration of Patrick Ward.

CONCLUSION

For the foregoing reasons, the Plaintiff's Complaint fails to state a claim upon which relief can be

granted, and, accordingly it should be dismissed.

Respectfully submitted,

DAVID WINN

By his attorney

MICHAEL J. SULLIVAN
UNITED STATES ATTORNEY

Dated: May 24, 2004

By: /s/ Jeremy Sternberg
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Certificate of Service

I hereby certify that on May 24, 2004, I caused a copy of this pleading to be sent by U.S. Mail to David G. Stern, Reg. No. 23799-038, Unit I (Camp), Federal Medical Center, Devens, P.O. Box 879, Ayer, MA 01432.

/s/ Jeremy Sternberg
Jeremy M. Sternberg
Assistant U.S. Attorney